

REIMBURSABLE SPACE ACT AGREEMENT  
BETWEEN  
MICROSOFT CORPORATION  
AND  
NASA AMES RESEARCH CENTER  
FOR  
COLLABORATIVE RESEARCH AND DEVELOPMENT

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473 (c)), this Agreement is entered into by the NASA Ames Research Center located at Moffett Field, CA 94035 (hereinafter referred to as "NASA ARC," "ARC," or "NASA") and Microsoft Corporation located at 1 Microsoft Way, Redmond, WA 98052, (hereinafter referred to as "Microsoft" or "Partner"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties".

ARTICLE 2. PURPOSE AND IMPLEMENTATION

This Umbrella Agreement (hereinafter referred to as the "Agreement" or "Umbrella Agreement") shall be for the purpose of developing tools and applications that will make NASA's data and information more readily available to the general public. This increased accessibility will facilitate increasing Americans' science and technology literacy as well as raise their general level of awareness of how NASA contributes to their everyday life. The Parties may elect to enter into other umbrella agreements as necessary and desirable by the Parties.

The Parties recognize that, with regard to any activities undertaken in furtherance of the purpose stated herein, it is the policy of NASA and of the United States Government to avoid competition with the private sector with regard to any activities conducted with a non-governmental entity on a reimbursable basis. Therefore, in accordance with NASA policy, the Parties acknowledge that any responsibilities for which NASA shall be reimbursed under any Annex hereto shall be limited to providing access to NASA unique goods, services and facilities that are not otherwise available on the U.S. commercial market from another source.

The Parties will execute one (1) Annex Agreement (hereinafter referred to as an "Annex") concurrently with this Agreement and may execute additional Annexes, as mutually agreed upon by the Parties, consistent with the purpose and terms of this Agreement. Each Annex shall be a part of the Umbrella Agreement and shall detail the specific purpose of the proposed activity, responsibilities, schedule and milestones, and any personnel, property or facilities to be utilized under the task. A template for future Annexes is attached hereto, as Appendix A. This Umbrella Agreement takes precedence over any Annexes. In the event of a conflict between the Umbrella Agreement and any Annex concerning the meaning of its provisions, and the rights, obligations and remedies

of the Parties, the Umbrella Agreement is controlling.

### ARTICLE 3. RESPONSIBILITIES

A. Partner will use reasonable efforts to:

1. Provide support of projects undertaken in any Annex, as specified in such Annex;
2. Provide internal coordination of approvals for Annexes; and
3. Provide for a single point of contact for Annex development and operations.

B. NASA ARC will use reasonable efforts to:

1. Provide support of projects undertaken in any Annex, as specified in such Annex;
2. Provide internal coordination of approvals for Annexes; and
3. Provide for a single point of contact for Annex development and operations.

### ARTICLE 4. SCHEDULE AND MILESTONES

The Parties will execute one (1) Annex concurrently with this Umbrella Agreement. The initial and any future Annexes will be performed in accordance with the schedule and milestones set forth in such Annex.

### ARTICLE 5. FINANCIAL OBLIGATIONS

1. Partner agrees to reimburse NASA, in whole or in part, as set forth in each Annex for NASA to carry out its responsibilities under this Agreement. In no event will NASA transfer any U.S. Government funds to Partner under this Agreement. Partner shall make payment in advance of initiation of NASA's efforts and in accordance with the payment schedule set forth in any Annex. Advance payments and installment payments shall be scheduled, as necessary, to ensure that funds are resident with NASA before Federal obligations are incurred in support of this Agreement.

2. Payment shall be payable to the National Aeronautics and Space Administration through U.S. Treasury FEDWIRE Deposit System, Federal Reserve Wire Network Deposit System, pay.gov at <https://www.nssc.nasa.gov/portal/site/customerservice/menuitem.bb29c518138071c056969daf4dd72749>, or check.

3. NASA will not provide services or incur costs beyond the available funding amount. Although NASA makes a good faith effort to accurately estimate its costs under each Annex, it is understood that NASA provides no assurance that the proposed effort under any Annex will be accomplished for the estimated amount. Should the effort cost more than the estimate, Partner will be advised by NASA as soon as possible. Partner shall pay all costs incurred and have the option of canceling any remaining effort, or providing additional funding in order to continue the proposed effort under a revised estimate. Should the Annex be terminated, or the effort completed at a cost less than the agreed-to estimated cost, NASA shall account for any unspent funds within six (6) months after



completion of all effort under such Annex, and promptly thereafter, at Partner's option return any unspent funds to Partner or apply such unspent funds to other activities under this Agreement.

3. Notwithstanding any other provision of this Agreement, all activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341. If NASA is unable to fulfill its responsibilities under this Agreement or any Annex as a result of an Anti-Deficiency Act violation, either Party may terminate this Agreement and/or any Annex, and unspent funds shall be accounted for in accordance with Article 16, Right to Terminate.

#### ARTICLE 6. PRIORITY OF USE

Any schedule or milestone in this Agreement or any Annex is estimated based upon the Parties' current understanding of the projected availability of NASA personnel, facilities and equipment. In the event that NASA's projected availability changes, Partner shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA usage of the facilities, equipment, and personnel shall have priority over the usage planned in this Agreement. Should a conflict arise, NASA in its sole discretion shall determine whether to exercise that priority. Likewise, should a conflict arise as between two commercial users, NASA, in its sole discretion, shall determine the priority as between the two users. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations. If NASA is unable to perform or must change its performance under this Agreement or any Annex due to the foregoing, either Party may terminate this Agreement and/or any Annex, and unspent funds shall be accounted for in accordance with Article 16, Right to Terminate.

#### ARTICLE 7. NONEXCLUSIVITY

This Agreement is not exclusive; accordingly, each Party may elect to enter into other agreements, as necessary or desirable by the Parties, for the same or similar purpose with other private or public entities.

#### ARTICLE 8. LIABILITY AND RISK OF LOSS

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2. Waiver of Liability by Partner.

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3. Waiver of Liability by Partner and NASA.

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ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS-PROPRIETARY  
INFORMATION-DATA RIGHTS

1. General

(a) “Related Entity” as used in this Data Rights clause, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner that is assigned, tasked, or contracted with to perform specified NASA or Partner



activities under this Agreement.

(b) "Data," as used in this Data Rights clause, means copyrighted works, recorded information, works of authorship, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, electronic files (whether images, audio, video, computer software and documentation thereof etc.), schematic files, and data that may comprise commercial and financial information. Data will not contain any personally identifiable information of any third parties or individuals, unless specifically addressed in an Annex Agreement.

(c) "Proprietary Information," as used in this Data Rights clause, means Data embodying trade secrets developed at private expense or comprising commercial or financial information that is privileged or confidential, and is marked with a suitable restrictive notice or specifically identified in an Annex Agreement, provided that such information: is not known or available from other sources without obligations concerning its confidentiality; has not been made available by the owners to others without obligation concerning its confidentiality; is not already available to the Government without obligation concerning its confidentiality; has not been developed independently by persons who have had no access to the information; and, is not required to be disclosed pursuant to Federal statute, law, regulation, or valid court order.

(d) The Data and Proprietary Information rights and obligations set forth herein are applicable to employees of Partner and employees of any Related Entity of Partner. Partner shall ensure that its employees and employees of any Related Entity that perform Partner activities under this Agreement are aware of the obligations under this clause and that all such employees are bound to such obligations.

(e) Data exchanged between NASA and Partner under this Agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise provided in this clause.

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(g) In the event that Data or Proprietary Information exchanged between NASA and Partner includes a restrictive notice that NASA or Partner deems to be ambiguous or unauthorized, NASA or Partner may notify the other Party of such condition. Notwithstanding such a notification, as long as the restrictive notice provides an indication that a restriction on use or disclosure was intended, the Party receiving such Data or Proprietary Information will treat the Data or Proprietary Information pursuant to the requirements of this clause unless otherwise directed in writing by the Party providing such Data or Proprietary Information.

(h) Notwithstanding any restriction on use, disclosure, or reproduction of Proprietary

Information provided in this clause, the Parties will not be restricted in the use, disclosure, or reproduction of Proprietary Information provided under this Agreement or any Annex that:

- (i) is publicly available at the time of disclosure or thereafter becomes publicly available without breach of this Agreement;
- (ii) is known to, in the possession of, or developed by the receiving Party independent of carrying out the receiving Party's responsibilities under this Agreement and independent of any disclosure of, or without reference to, Proprietary Information or otherwise protectable Data hereunder;
- (iii) is received from a third party having the right to disclose such information without restriction; or
- (iv) is required to be produced or released by the receiving Party pursuant to a court order or other legal requirement; or
- (v) is exempted under Section 1(c) above.

(i) If either NASA or Partner believes that any of the events or conditions that remove restriction on the use, disclosure, or reproduction of the Data or Proprietary Information apply, NASA or Partner will promptly notify the other Party of such belief prior to acting on such belief, and, in any event, will notify the other Party prior to an unrestricted use, disclosure, or reproduction of such Data or Proprietary Information.

(j) Disclaimer of Liability: Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this clause, NASA or Partner will not be restricted in, nor incur any liability for, the use, disclosure, or reproduction of (1) any Data not identified with a suitable restrictive notice in accordance with paragraphs 1 (c), 2 and 8 of this clause or specifically identified as Proprietary Information in an Annex Agreement or (2) any Data that Partner has furnished, or is required to furnish, to the U.S. Government without restriction on disclosure and use.

## 2. Partner Background Data and Data First Produced by Partner Under this Agreement

(a) In the event Partner background Data (Data that existed prior to or was produced outside of this Agreement) or Data First Produced by Partner that contains Proprietary Information is provided or identified by Partner (or any Related Entity of Partner) to NASA under this Agreement, NASA will use reasonable efforts to maintain the Proprietary Information in confidence and such Proprietary Information will be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA responsibilities under this Agreement or any Annex Agreement. Proprietary Information shall be identified by Partner in each Annex Agreement. Upon completion of activities under this Agreement or any Annex Agreement, such Proprietary Information will be disposed of as requested by Partner.

(b) Unless provided otherwise in this Agreement or otherwise agreed to in writing, with respect to such Proprietary Information specifically identified in any Annex Agreement hereto or specifically marked with a restrictive notice, NASA agrees to:

- (i) Use, disclose, or reproduce such Proprietary Information only to the extent



necessary to perform the work required under this Agreement or any Annex;

(ii) Safeguard such Proprietary Information from unauthorized use and disclosure;

(iii) Allow access to such Proprietary Information only to its employees and any Related Entity that requires access for their performance under this Agreement or Annex Agreement;

(iv) Except as otherwise indicated in (c)(iii) above, preclude access and disclosure of such Proprietary Information outside NASA's organization;

(v) Notify its employees who may require access to such Proprietary Information about the obligations under this clause and ensure that such employees comply with such obligations, and notify its Related Entity that may require access to such Proprietary Information about their obligations under this clause; and

(vi) Return or dispose of such Proprietary Information, as Partner may direct, when the Proprietary Information is no longer needed for performance under this Agreement or Annex Agreement.

### 3. Data First Produced by NASA under this Agreement

Except for Proprietary Information disclosing an invention owned by NASA for which patent protection is being considered, in the event Partner requests that Data first produced by NASA (or any Related Entity of NASA) in carrying out NASA's responsibilities under this Agreement be maintained in confidence, and to the extent NASA determines that such Data would be Proprietary Information if it had been obtained from Partner, NASA will mark such Data with a restrictive notice and will use reasonable efforts to maintain such marked Data in confidence for the period specified in each Annex Agreement (not to exceed five (5) years after the development of the Data), with the express understanding that during the aforesaid restricted period such marked Data may be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA responsibilities under this Agreement or any Annex Agreement. Upon completion of activities under an Annex Agreement, disposition of such marked Data shall be addressed and set forth in each Annex.

### 4. Other Proprietary Information Obligations.

(a) Security Precautions. The Parties agree: (i) to notify the affected Party promptly upon discovery of any unauthorized use or disclosure of Proprietary Information; and (ii) to cooperate with the other Party to help regain control of the Proprietary Information and prevent further unauthorized use or disclosure of it.

(b) Sharing Proprietary Information with Related Entities. No Party is required to restrict work assignments of employees or Related Entities who have had access to Proprietary Information. No Party can control the incoming information each other party will disclose in the course of working together, or what its employees, Related Entities or affiliates will remember, even without notes or other aids. Receiving Party agrees that its employees and Related Entities (i) do not refer to any tangible form of Proprietary



Information, or deliberately and knowingly utilize any residuals, for any purpose other than carrying out its responsibilities under this Agreement or any Annex Agreement, and (ii) do not deliberately memorize any tangible form of such Proprietary Information to acquire such residuals.

(c) **Disclosing Proprietary Information If Required to By Law.** Each party may disclose any other's Proprietary Information if required to comply with a court order or other government demand that has the force of law (including, disclosures pursuant to the applicable Public Records Act). Before doing so, such Party shall use reasonable efforts to give the disclosing Party enough prior notice to seek a protective order.

## 5. Publication of Results

Recognizing that section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2473), as amended, requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, and that the dissemination of the results of NASA activities is one of the considerations for this Agreement, the Parties agree to coordinate proposed publication of results with each other in a manner that allows each Party a reasonable amount of time to review and comment on proposed publications. Before submitting any proposed publication or making any public presentation, the Parties will need to ensure that such publication or presentation does not contain any NASA Sensitive Data, as defined in Article 9, paragraph 10, Proprietary Information or patentable subject matter. To that end, a copy of each proposed publication shall be provided at least thirty (30) calendar days prior to submission for publication or public presentation of a manuscript or abstract describing any aspect of a project under an Annex. If no written comments are received within ten (10) business days of receipt of the proposed publication, such publication will be deemed approved. If, during the ten (10) day review period, written comments concerning NASA Sensitive, Proprietary Information, or patentable subject matter are received, then the publishing Party will stop publication to address the received comments. The Parties agree to undertake good faith efforts to resolve publication issues within ten (10) business days of receipt of written concerns. Notwithstanding this general freedom, nothing in this section will constitute a waiver of NASA's other obligations under this Agreement with regard to Proprietary Information.

## 6. Data Disclosing an Invention

In the event Data exchanged between NASA and Partner discloses an invention for which patent protection is being considered, the furnishing Party specifically identifies such Data, and the disclosure and use of such Data is not otherwise limited or restricted herein, the receiving Party agrees to withhold such Data from public disclosure for a reasonable time (presumed to be 1 year unless mutually agreed otherwise or unless such information is restricted for a longer period herein) in order for patent protection to be obtained.

## 7. Copyright

Unless addressed elsewhere in this Agreement, the rights of the Parties to use specific Data will be set forth in each Annex Agreement. With respect to any joint copyrights, either Party may exploit its interest in such copyrights without any duty to account to the other. The Parties acknowledge that Partner's decision to commercialize joint copyrighted works is based on Partner's undivided ownership interest in such copyrighted works and unless otherwise set forth in an Annex, Partner assumes all risks associated with Partner's commercialization efforts.

## 8. Data Subject to Export Control

Data, whether or not specifically identified or marked, that is subject to the export laws and regulations of the United States and that is provided to Partner under this Agreement will be treated as such, and will not be further provided to any foreign persons or transmitted outside the United States without proper U.S. Government authorization, if required.

## 9. [Reserved]

## 10. Handling of Data

(a) In the performance of this Agreement, Partner and any Related Entity of Partner may have access to, be furnished with, or use the following categories of Data:

- (i) Proprietary Information, Data or Inventions of third parties that the U.S. Government has agreed to handle under protective arrangements; or
- (ii) NASA Sensitive Data, the use and dissemination of which, the U.S. Government intends to control. "NASA Sensitive Data" is sensitive NASA information subject to special protection requirements supported by laws, directives or regulations and that NASA informs Partner in writing is Sensitive Data.

(b) Data provided by NASA to Partner under the Agreement.

(i) The Parties agree that Proprietary Information of third parties, NASA Sensitive Data, and software and related Data is provided to the Partner with the express understanding that Partner will use and protect the foregoing in accordance with this clause. Such Data shall be identified in each Annex to this Agreement.

(ii) Software and related Data shall be provided to Partner under a separate Software Usage Agreement or license agreement with the express understanding that Partner will use and protect such related Data in accordance with this clause. NASA shall use best efforts to negotiate with Partner an acceptable Software Usage Agreement or license agreement for such software in accordance with an Annex. Unless retention of such Data is otherwise authorized under the Software Usage Agreement or Partner has entered into a license, consistent with 37 C.F.R. Part 404, for software provided under this Agreement, upon completion of activities under this Agreement, such related Data will be disposed of as instructed by NASA.



(c) Unless provided otherwise in this Agreement or otherwise agreed to in writing, with respect to such Data specifically identified in any Annex Agreement hereto or specifically marked with a restrictive notice, Partner agrees to:

(i) Use, disclose, or reproduce such Data only to the extent necessary to perform the work required under this Agreement;

(ii) Safeguard such Data from unauthorized use and disclosure;

(iii) Allow access to such Data only to its employees and any Related Entity that require access for their performance under this Agreement;

(iv) Except as otherwise indicated in (c)(iii) above, preclude access and disclosure of such Data outside Partner's organization;

(v) Notify its employees who may require access to such Data about the obligations under this clause and ensure that such employees comply with such obligations, and notify its Related Entity that may require access to such Data about their obligations under this clause; and

(vi) Return or dispose of such Data, as NASA may direct, when the Data is no longer needed for performance under this Agreement.

#### 11. Oral and visual information

If information that a Party considers to be Proprietary Information or NASA Sensitive Information is disclosed orally or visually to the other Party, the receiving Party will have no duty to limit or restrict, and will not incur any liability for, any disclosure or use of such information unless: (a) the disclosing Party orally informs the receiving Party before initial disclosure that such information is considered to be Proprietary Information or NASA Sensitive Information and reduces such information to tangible, recorded form that is identified and marked with a suitable restrictive notice as required by paragraphs 1(c), 2 and 8 above and furnishes the resulting Data to the receiving Party within ten (10) calendar days after such oral or visual disclosure, or (b) the disclosing Party specifically identifies such information to be Proprietary Information or NASA Sensitive Information in an Annex Agreement.

### ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS – INVENTION AND PATENT RIGHTS

#### 1. General

(a) "Related Entity" as used in this Invention and Patent Rights clause means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner that is assigned, tasked, or contracted with to perform specified NASA or Partner activities under this Agreement.

(b) Based on the purpose and scope of this Agreement, and the responsibilities of the Parties, NASA has made an administrative determination that the provisions of section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. § 2457(a)), do not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) as a result of activities performed under this



Agreement will remain with the respective inventing party(ies), and no invention or patent rights are exchanged between or granted by such parties under this Agreement except as provided herein.

(c) The invention and patent rights set forth herein are applicable to employees of Partner and employees of any Related Entity of Partner. Partner shall ensure that its employees and employees of any Related Entity that perform Partner activities under this Agreement are aware of the obligations under this clause and that all such employees are bound to such obligations.

## 2. NASA Inventions

Upon request, for fully reimbursable Annex Agreements, NASA will use best efforts to grant Partner, consistent with the requirements of 37 C.F.R. Part 404, a license to any NASA invention made as a result of activities performed under this Agreement on which NASA decides to file a patent application on terms substantially similar to Appendix B. This license will be subject to the rights reserved in paragraph 5(a) below. NASA is under no obligation to file a patent application on any NASA invention.

## 3. NASA Related Entity Inventions

In the event that inventions are made under this Agreement by employees of a NASA Related Entity or jointly between NASA employees and employees of a NASA Related Entity, and NASA has the right to acquire or has acquired title to such inventions, NASA will use reasonable efforts to report such inventions. Upon request, for fully reimbursable Annex Agreements, NASA will use best efforts to grant Partner, consistent with the requirements of 37 C.F.R. Part 404, a license to any such invention on which NASA has acquired title and decides to file a patent application on terms substantially similar to Appendix B. This license will be subject to the rights reserved in paragraph 5(b) below. NASA is under no obligation to file a patent application on any NASA Related Entity invention.

## 4. Joint Inventions With Partner

(a) The Parties do not intend to create joint inventions under this Agreement and shall use reasonable efforts to avoid such creations. In the event the Parties, desire or agree to create joint inventions, the inventions will be defined in the controlling Annex Agreement. The ownership of joint inventions developed under any Annex shall be addressed in each Annex Agreement. In the event that joint inventions are created, the Parties will meet to discuss in good faith the handling of such intellectual property around these inventions. If agreement cannot be reached, the Parties shall each have rights in the joint intellectual property as is vested in them under law. The Parties acknowledge that Partner's decision to commercialize such joint intellectual property is based on Partner's undivided ownership interest in such intellectual property and unless otherwise set forth in an Annex, Partner assumes all risks associated with Partner's commercialization efforts.

(b) In the event joint inventions are created, NASA and Partner agree to use reasonable efforts to identify and report to each other, and to cooperate with each other in obtaining patent protection on any inventions made jointly between NASA employees (or employees of a NASA Related Entity) and employees of Partner. Upon timely request, NASA may, at its sole discretion and subject to the applicable rights reserved in paragraph 5 below:

(i) agree to refrain from exercising its undivided interest in a manner inconsistent with Partner's commercial interests; or

(ii) use reasonable efforts to grant Partner, consistent with the requirements of 37 C.F.R. Part 404, an exclusive or partially exclusive license on terms to be subsequently negotiated to NASA's undivided interest in such joint inventions.

#### 5. Rights to be Reserved in Partner's License

Any license granted to Partner pursuant to paragraphs 2, 3, or 4 above will be subject to the reservation of the following rights:

(a) As to inventions made solely or jointly by NASA employees, NASA reserves the irrevocable, royalty-free right of the Government of the United States to practice the invention or have the invention practiced on behalf of the United States or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(b) As to inventions made solely or jointly by employees of a NASA Related Entity, NASA reserves the rights as set forth in paragraph (a) above, as well as the revocable, nonexclusive, royalty-free license in the Related Entity as set forth in 14 C.F.R. § 1245.108 or 37 C.F.R. § 401.14 (e), as applicable.

#### 6. Protection of Reported Inventions

When inventions are reported and disclosed between the Parties in accordance with the provisions of this clause, the receiving Party agrees to withhold such reports or disclosures from public access for a reasonable time (presumed to be 1 year unless otherwise mutually agreed or unless such information is restricted for a longer period herein) in order to facilitate the allocation and establishment of the invention and patent rights under these provisions.

#### 7. Patent Filing Responsibilities and Costs

(a) The invention and patent rights set forth herein will apply to any patent application filed and any patent obtained covering an invention made as a result of the performance of activities under this Agreement. Each Party is responsible for its own costs of obtaining and maintaining patents covering sole inventions of its employees; except that NASA and Partner may mutually agree in writing otherwise, upon the reporting of any invention (sole or joint) or in any license granted, as to responsibilities and course of



action to be taken to establish and maintain patent protection on such invention.

(b) Partner agrees to include the following statement in any patent application it files for an invention made jointly between NASA employees (or employees of a NASA Related Entity) and employees of Partner:

The invention described herein may be manufactured and used by or for the U.S. Government for U.S. Government purposes without the payment of royalties thereon or therefore.

#### 8. Related Inventions

(a) For the purposes of this paragraph, a related invention is an invention related to the subject matter of this Agreement, but not made as a result of activities performed under this Agreement, that is covered by a patent application or patent owned by NASA or Partner. To the extent NASA related invention(s) are known and identified in paragraphs (b) or (d) below, upon request, and to the extent such related inventions are available for licensing, NASA shall enter into good faith negotiations to grant Microsoft a license, as agreed in a related Annex Agreement, that is consistent with the requirements of 37 C.F.R. Part 404.

(b) The Parties agree that related inventions provided to Partner shall be identified in each Annex to this Agreement.

(c) Related Computer Software: Partner agrees to maintain such software in confidence and use it only for carrying out Partner responsibilities under this Agreement. Unless Partner has entered into a license or negotiations to obtain a license, consistent with Article 21 and Appendix B, for software provided under this Agreement, upon completion of activities under this Agreement, all copies of such software will be disposed of as instructed by NASA. Absent a license, software will be disposed of as instructed unless such negotiations successfully conclude in an executed license agreement under Article 21 and Appendix B within six months of notification to NASA seeking a license to Related Computer Software.

(d) The Parties agree that related computer software provided to Partner shall be provided in accordance with paragraph (c) above and shall be identified in each Annex to this Agreement.

### ARTICLE 11 USE OF NASA NAME AND NASA EMBLEMS AND RELEASE OF GENERAL INFORMATION TO THE PUBLIC

#### 1. NASA Name and Initials

Partner agrees the words "National Aeronautics and Space Administration" and the letters "NASA" will not be used in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, with the exception of release of general information in accordance with paragraph 3 below, Partner agrees that any proposed public use of the NASA name or



initials (including press releases resulting from activities conducted under this Agreement and all promotional and advertising use) shall be submitted by Partner in advance to the NASA Assistant Administrator for Public Affairs or designee ("NASA Public Affairs") for review and approval. Approval by NASA Public Affairs shall be based on applicable law and policy governing the use of the NASA name and initials.

## 2. NASA Emblems

Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) are governed by 14 C.F.R. Part 1221. Partner agrees that any proposed use of such emblems/devices shall be submitted for review and approval by NASA Public Affairs in accordance with such regulations.

## 3. Release of General Information to the Public

NASA or Partner may, consistent with Federal law and this Agreement, release general information regarding its own participation in this Agreement. The Parties shall coordinate, in advance, any press release or release of information that relates to the other Party's responsibilities or performance under this Agreement.

## ARTICLE 12 DISCLAIMER OF WARRANTY

Equipment, facilities, technical information, and services provided by NASA under this Agreement are provided "as is." NASA makes no express or implied warranty as to the condition of such equipment, facilities, technical information, or services, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that the equipment, facilities, technical information, or services provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately owned rights of others. Neither the government, its contractors, nor Partner shall be liable for special, consequential or incidental damages attributed to such equipment, facilities, technical information, or services provided under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement or any Annex Agreement.

## ARTICLE 13 DISCLAIMER OF ENDORSEMENT

NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement or supply of equipment, facilities, technical information, or services under this Agreement does not constitute endorsement by NASA. Partner agrees that nothing in this Agreement will be construed to imply that NASA authorizes, supports, endorses, or sponsors any product or service of Partner resulting from activities conducted under this Agreement, regardless of the fact that such

product or service may employ NASA-developed technology.

#### ARTICLE 14 COMPLIANCE WITH LAWS AND REGULATIONS

1. The Parties shall comply with all applicable laws and regulations including, but not limited to, safety, security, export control, and environmental laws and regulations. Access by Partner to a NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines, provided to Partner in advance, including, but not limited to, standards on badging, credentials, and facility and IT system/application access.

2. With respect to any export control requirements:

(a) The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in performing work under this Agreement or any Annex. In the absence of available license exemptions/exceptions, the Partner shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.

(b) The Partner shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this Agreement or any Annex to this Agreement, including instances where the work is to be performed on-site at NASA and where the foreign person will have access to export-controlled technical data or software.

(c) The Partner will be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions or exceptions.

(d) The Partner will be responsible for ensuring that the provisions of this Article apply to its Related Entities (as defined in Article 9).

#### ARTICLE 15 TERM OF AGREEMENT

This Umbrella Agreement becomes effective upon the date of the last signature below and shall remain in effect for five (5) years; provided, however, that if an Annex is still in effect, this Umbrella Agreement shall stay in effect until the expiration of such Annex solely for the purposes of each Party completing the obligations under such Annex.

#### ARTICLE 16 RIGHT TO TERMINATE

1. In addition to termination rights provided for in Article 5.3 and Article 6, either Party may unilaterally terminate this Umbrella Agreement or any Annex(es) by providing written notice to the other Party at least thirty (30) days before the desired date of



termination.

2. In such event, Partner will be responsible for all costs incurred prior to the effective date of the notice of termination and, if Partner terminates this Agreement or any Annex, such other costs that are incurred as a result of such termination.

3. NASA shall account for any excess funds within six (6) months after such termination and promptly return any such funds to Partner or, if either Party terminates any Annex(es), the Parties may mutually agree to apply such excess funds to any other Annex(es), as appropriate, under this Agreement.

4. Termination of an Annex does not terminate this Umbrella Agreement, however, the termination of this Umbrella Agreement also constitutes the termination of all outstanding Annexes.

#### ARTICLE 17 CONTINUING OBLIGATIONS

The obligations of the Parties set forth in the provisions, "Liability and Risk of Loss," "Intellectual Property Rights," and "Financial Obligations" shall continue to apply after the expiration or termination of this Agreement.

#### ARTICLE 18 MANAGEMENT POINTS OF CONTACTS

The following personnel are designated as the principal points of contact between the Parties in the performance of this Agreement.

NASA Ames Research Center

Chris C. Kemp  
Chief Information Officer  
Mail Stop: 233  
Moffett Field, CA 94035  
Phone: 650-604-4822  
Fax: 650-604-6999  
Chris.C.Kemp@nasa.gov

Microsoft Corporation

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#### ARTICLE 19. DISPUTE RESOLUTION

Except as otherwise provided in the article entitled "Priority of Use," the article entitled "Intellectual Property Rights – Invention and Patent Rights" (for those activities governed by 37 C.F.R. Part 404), and those situations where a pre-existing statutory or regulatory system exists (e.g. under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the "Management Points of Contact." The persons identified as the "Management Points of Contact" for NASA and the Partner will consult and attempt to resolve all



issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this Agreement, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA signatory or that person's designee, as applicable will promptly issue a written decision that will be the final agency decision for the purpose of judicial review. Nothing in this section limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final agency decision.

## ARTICLE 20. MODIFICATIONS

Any modification to this Agreement or any Annex shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. Any modification that creates an additional commitment of NASA resources must be signed by the original NASA signatory authority, or successor, or a higher level NASA official possessing original or delegated authority to make such a commitment.

## ARTICLE 21. SOFTWARE DEVELOPED SOLELY BY NASA, SOFTWARE TECHNICAL LIMITATIONS & SOFTWARE PROVIDED BY MICROSOFT

### 1. Software Developed Solely By NASA

Each Annex Agreement will address software developed under this Agreement solely by NASA and its Related Entities (as defined in Articles 9 and 10). Subject to withholding no longer than the period agreed upon and identified in each Annex Agreement for Article 9.3, Data First Produced by NASA Under this Agreement, the Parties agree that software developed solely by NASA will be provided to Microsoft in either one of two ways: a) for fully reimbursable Annex Agreements, where Microsoft indicates its interest in commercial redistribution in an Annex Agreement as discussed in Paragraph 2 below, NASA will provide such software under a non-exclusive license substantially similar to the license terms of Appendix B; and, b) where Microsoft does not indicate commercial redistribution goals, where the Parties desire broad distribution of such software, NASA will release such software as open source software under licenses mutually agreed upon by the Parties. NASA's preferred open source release mechanism is under the NASA Open Source Agreement (NOSA). License terms substantially similar to those of Appendix B may be used for partially reimbursable Annex Agreements at NASA's sole discretion.

### 2. Technical Limitations

(a) For software developed under this Agreement or an Annex Agreement, which Microsoft has an interest in commercially redistributing, NASA will not combine, incorporate, or link any inventions or work under this Agreement to software code subject to a Reach-Through License, or make any code developed in connection with work under an Annex available under a Reach-Through License.

(b) A "Reach-Through License" is a license that requires, as a condition of the use,

modification, or distribution of software subject to the license, that such software and/or other software combined and/or distributed with such software be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

(c) In each Annex Agreement or thereafter by written notice, Microsoft will indicate whether or not it has an interest in commercially redistributing software developed by NASA under each Annex Agreement and acceptable licenses for new work will be defined under Appendix B as described in Article 21, Section 1. Where Microsoft notifies NASA after commencement of Annex Agreement performance, based upon software development up to that point, the Parties will reasonably and promptly confer to address Microsoft's desired ability to commercially redistribute such software and the ability to enter into a license for such software under Appendix B in light of the above technical limitations.

### 3. Software Provided by Microsoft

Software provided by Microsoft under this Agreement or any Annex will be delivered pursuant to a EULA covering NASA and any support service contractors that will need access under an Annex Agreement. Software will be delivered directly by Microsoft to NASA support service contractors. Microsoft software will be identified in each Annex Agreement.

## ARTICLE 22. ASSIGNMENT

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing this Agreement.

## ARTICLE 23. APPLICABLE LAW

U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

## ARTICLE 24. INDEPENDENT RELATIONSHIP

This Agreement is not intended to constitute, create, give effect or otherwise recognize a joint venture, partnership, or formal business organization, or agency agreement of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein.



ARTICLE 25. SIGNATORY AUTHORITY

The signatories to this Agreement covenant and warrant that they have authority to execute this Agreement. By signing below, the undersigned agrees to the above terms and conditions.

NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION  
AMES RESEARCH CENTER

BY: 

Dr. S. Pete Worden  
Center Director  
Mail Stop: 200-1  
Moffett Field, CA 94035  
Phone: 650-604-5111

MICROSOFT CORPORATION

BY: 

Rick Rashid  
1 Microsoft Way  
Building 99/4126  
Redmond, WA 98052-6399  
Phone: 425-706-9080

DATE: 12 FEB 2009

DATE: 23 FEB 2009

APPENDIX A  
ANNEX TEMPLATE

ANNEX NO. \_\_\_\_  
BETWEEN THE  
MICROSOFT CORPORATION  
AND  
NASA AMES RESEARCH CENTER  
FOR  
[INSERT PROJECT DESCRIPTION]

In accordance with the terms and conditions set forth in Space Act Agreement No. SAA2-402322, dated February \_\_\_\_, 2009, the Parties hereby agree as follows. Each capitalized term used in this Annex, but not defined herein, shall have the meaning ascribed to it in the above referenced Umbrella Agreement.

ARTICLE 1. PURPOSE AND OVERVIEW

\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 2. RESPONSIBILITIES

A. Partner will use reasonable efforts to:

\_\_\_\_\_  
\_\_\_\_\_

B. NASA ARC will use reasonable efforts to:

\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 3. SCHEDULE AND MILESTONES

The planned major milestones for the activities defined in the "Responsibilities" clause are as follows:

\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 4. FINANCIAL OBLIGATIONS

1. Partner agrees to reimburse NASA an estimated cost of approximately \$\_\_\_\_\_ to carry out its responsibilities under Article(s) \_\_\_\_\_ of this Annex, provided that no funding from Microsoft will be used for development or promotion of GPL open source software.



## ARTICLE 5. TECHNICAL POINTS OF CONTACT

The following personnel are designated as the principal points of contact between the Parties in the performance of this Annex.

Key Technical Personnel	
NASA	Microsoft
Name:	Name:
Title:	Title:
Address:	Address:
Email:	Email:
Tel. No.:	Tel. No.:

## ARTICLE 6. TERM OF ANNEX

This Annex becomes effective upon the date of the last signature below and shall remain in effect until the completion of all obligations of both Parties hereto, or \_\_\_\_\_ [years/months] from the date of the last signature, whichever comes first.

## ARTICLE 7. LIABILITY AND RISK OF LOSS

[TO BE INSERTED]

## ARTICLE 8. IDENTIFIED INTELLECTUAL PROPERTY; INCLUDING PROPRIETARY DATA AND RELATED INVENTIONS

1. This Annex is subject to the Intellectual Property provisions contained within Articles 9 and 10 of the Umbrella Agreement.

### 2. Proprietary Information.

a. In accordance with Article 9.2 of the Umbrella Agreement, Partner will provide the following Proprietary Information to NASA to be used in performance of this Annex. This list is not comprehensive, is subject to change during the course of this Annex, and is not meant to supersede any restrictive markings contained on Data provided:

\_\_\_\_\_  
\_\_\_\_\_

b. In accordance with Article 9.10, NASA will provide Partner with the following Proprietary Information, Data or Inventions or NASA Sensitive Data:

\_\_\_\_\_  
\_\_\_\_\_

c. In accordance with Article 9.3 of the Umbrella Agreement, Partner requests that the following Proprietary Information first produced by NASA under this Annex shall be withheld for a period of \_\_\_ year(s):

d. Upon completion of all activities under this Annex, Proprietary Information shall be disposed of as follows:

3. Software Developed Under This Annex. In accordance with Article 10.9 (c) of the Umbrella Agreement, Microsoft [does/does not] have an interest in commercially distributing software provided or developed under this Annex. In accordance with Article 9.3 of the Umbrella Agreement,

[SELECT ONE, AS APPROPRIATE]

- a. NASA plans to release software tools developed under this Annex as open source software.
- b. Software tools developed by NASA under this Annex Agreement shall be provided to Microsoft in the form of a Software License Agreement substantially similar to Appendix B of the Umbrella Agreement.

4. Joint Inventions. In accordance with Article 10.4 of the Umbrella Agreement, the Parties do not intend to create any joint inventions under this Annex. [IF THE PARTIES ANTICIPATE JOINT INVENTIONS, ADDRESS JOINT OWNERSHIP HERE]

5. Related Inventions and Related Computer Software. In accordance with Article 10.8 of the Umbrella Agreement, the following is a list of related inventions (including related patented computer software):

[IDENTIFY RELATED INVENTIONS AND RELATED COMPUTER SOFTWARE AND OWNERSHIP; AND IF NONE, SO STATE.]

#### ARTICLE 9. SIGNATORY AUTHORITY

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
AMES RESEARCH CENTER

MICROSOFT CORPORATION

BY: \_\_\_\_\_  
[NAME]  
[TITLE]  
Mail Stop:  
Moffett Field, CA 94035  
Phone: \_\_\_\_\_

BY: \_\_\_\_\_  
[NAME]  
[TITLE]  
1 Microsoft Way  
Redmond, WA 98052-6399  
Phone: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Microsoft Umbrella Agreement  
APPENDIX A



## APPENDIX B

NOTICE: This License Agreement framework is a negotiated agreement between NASA and Microsoft. Prior to fulfilling any request for its disclosure under a Freedom of Information Act (FOIA) request for information, an analysis under exemption 5 USC 552(b)(4) will be performed in coordination with Microsoft.

### LICENSE AGREEMENT

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

AND

MICROSOFT CORPORATION

NON-EXCLUSIVE LICENSE AGREEMENT DN-

LICENSE COMMENCEMENT DATE:

